

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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ARBUTUS BIOPHARMA CORP., *et al.* )  
Plaintiffs, )  
v. )  
MODERNA, INC., *et al.* )  
Defendants. )  
\_\_\_\_\_  
C.A. No. 22-00252-MSG

**MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE***

*Amicus Curiae*, the Bayh-Dole Coalition (“Bayh-Dole”), respectfully moves this Court, for leave to file the Letter Brief attached hereto as Exhibit A, as *Amicus Curiae* in response to the Statement of Interest filed by the United States of America (the “Government”) (D.I. 49) and the Court’s February 16, 2023 Order requesting briefing on the impact of the Government’s Statement of Interest (D.I. 51). In support of this Motion, Bayh-Dole states the following:

1. On November 2, 2022, the Court issued a Memorandum Opinion denying the Moderna Defendants’ partial motion to dismiss the complaint filed in the above captioned action under 28 U.S.C. § 1498(a) (the “Opinion”). (D.I. 31.)
2. The Opinion noted that a determination on the applicability of Section 1498(a) was premature because, among other reasons, the Government had not filed a statement of interest in this action providing its express consent to the complained actions. (*Id.*)
3. On February 14, 2023, the Government filed a Statement of Interest. (D.I. 49.)

4. In response, the Court directed the Government and the parties to submit letter briefs of “no more than ten pages regarding the impact of the Government’s Statement of Interest on the scheduling of this matter.” (D.I. 51.)

5. *Amicus Curiae* is the Bayh-Dole Coalition, a non-profit, non-partisan, 501(c)(4) corporation consisting of various innovation-oriented organizations and academic institutions committed to celebrating and protecting the Bayh-Dole Act, and to preserving the reliability of U.S. patents as private property rights on which the Bayh-Dole system depends.

6. Bayh-Dole seeks leave to offer supporting legal analysis that is necessary for this Court to consider in light of the Statement of Interest by the Government: The express text, legislative history, and judicial interpretation of Section 1498 establish that this is an eminent domain statute that has no applicability to the purchase contract between the Moderna Defendants and the federal government.

7. Since the Government is not yet a party to this action, Bayh-Dole did not seek the Government’s position on this Motion. Plaintiffs do not oppose this Motion. Defendants oppose the Motion.

WHEREFORE, Bayh-Dole respectfully requests that the Court grant this Motion and accept the Letter Brief attached hereto as Exhibit A.

Dated: March 6, 2023

**WOMBLE BOND DICKINSON (US) LLP**

/s/ *Stephanie S. Riley*

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